

1 Abran E. Vigil  
Nevada Bar No. 7548  
2 vigila@ballardspahr.com  
BALLARD SPAHR LLP  
3 1980 Festival Plaza Drive, Suite 900  
Las Vegas, Nevada 89135-2958  
4 Tel.: 702-471-7000  
Fax: 702-471-7070

5 *Attorneys for Court-Appointed Receiver,*  
6 *Thomas W. McNamara*

7  
8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA  
10

11 FEDERAL TRADE COMMISSION,

12 Plaintiff,

13 v.

14 LEAD EXPRESS, INC., et al.,

15 Defendants.  
16

Case No. 2:20-cv-00840-JAD-NJK

**NOTICE OF RECEIVER'S FINAL  
REPORT AND APPLICATION FOR: (1)  
DISCHARGE OF RECEIVER, AND (2)  
APPROVAL OF FINAL FEE  
APPLICATION**

17 Thomas W. McNamara, as Receiver, by and through his undersigned counsel, hereby  
18 submits this Final Report for the Court's consideration, and hereby applies for discharge of the  
19 Receiver and approval of the Receiver's Final Fee Application for the period August 1, 2020  
20 through April 30, 2021. This Application is made pursuant to Sections XII.F and XVIII of the  
21 Order Granting Stipulation to Enter Preliminary Injunction Against the Corporate Defendants  
22 ("PI," ECF No. 44) and is based upon this Final Report and Application, the Declaration of  
23 Thomas W. McNamara, and upon such other pleadings and oral and documentary evidence as  
24 may be presented at or before the time of the hearing on the Application.

25 **INTRODUCTION**

26 On May 11, 2020, the Federal Trade Commission ("FTC") initiated this lawsuit against  
27 corporate defendants Lead Express, Inc.; Camel Coins, Inc.; Sea Mirror, Inc.; Naito Corp.;  
28 Kotobuki Marketing, Inc.; Ebisu Marketing, Inc.; Hotei Marketing, Inc.; Daikoku Marketing,

1 Inc.; tribal entity La Posta Tribal Lending Enterprise (the “Tribal Defendant”); and individual  
 2 defendants Takehisa Naito (“Naito”) and Keishi Ikeda (“Ikeda” and, collectively with Naito, the  
 3 “Individual Defendants”) for alleged violations of Section 5(a) of the FTC Act, the FTC’s  
 4 Telemarketing Sales Rule, the Truth in Lending Act, and the Electronic Fund Transfer Act in  
 5 connection with the offering and extension of credit in the form of high-fee, short-term “payday”  
 6 loans. *See* ECF No. 1.

7 Mr. McNamara was appointed as the Receiver of the Receivership Entities<sup>1</sup> on June 19,  
 8 2020 with the Court’s entry of a Stipulated Preliminary Injunction against the Corporate  
 9 Defendants. *See* ECF No. 44 (“PI”). The Court has now entered a Stipulated Order for  
 10 Permanent Injunction and Monetary Judgment as to the Receivership Entities and Individual  
 11 Defendants, ECF No. 95, and the FTC’s Motion for Default Judgment as to the Tribal Defendant  
 12 is pending, ECF No. 91. With the case resolved as to the Receivership Entities, and having  
 13 fulfilled his duties under the PI, the Receiver now presents this Final Report and requests  
 14 discharge from his duties and final payment of fees and expenses.

## 15 **FINAL REPORT**

### 16 **I. Commencement of the Receivership**

#### 17 **A. Appointment of the Receiver**

18 The Receiver was appointed by entry of the PI on June 19, 2020. Concurrent, separate  
 19 preliminary injunctions were entered against each of the Individual Defendants, Naito (ECF No.  
 20 45) and Ikeda (ECF No. 46), as well as the Tribal Defendant (ECF No. 47, the “Tribal PI”).  
 21 Neither of the Individual Defendants, nor the Tribal Defendant, were subject to the receivership.  
 22 However, the Tribal Defendant had a number of specific obligations related to the receivership,  
 23 which are discussed in greater detail below (*see* Sections II.A and III.A).

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 25 <sup>1</sup> Receivership Entities are defined in the PI to mean the “Corporate Defendants [Lead Express,  
 26 Inc., Camel Coins, Inc., Sea Mirror, Inc., Naito Corp., Kotobuki Marketing, Inc., Ebisu  
 27 Marketing, Inc., Hotei Marketing, Inc., and Daikoku Marketing, Inc., and each of their  
 28 subsidiaries, affiliates, successors, and assigns] as well as any other entity that has conducted any  
 business related to lending services, including receipt of Assets derived from any activity that is  
 the subject of the Complaint in this matter, and that the Receiver determines is controlled or  
 owned by any Corporate Defendant or Individual Defendant.” *See* PI Definitions, paragraph K,  
 page 5.

1 The Receiver was given a number of duties under the PI including, but not limited to:

- 2 • Taking custody and control of the Receivership Entities' assets and documents,
- 3 PI § XII.B;
- 4 • Preserving the value of the Receivership Entities' assets, PI § XII.D;
- 5 • Preventing the loss of the Receivership Entities' documents, PI § XII.E;
- 6 • Securing and taking exclusive custody of Receivership Entities' business location,
- 7 PI § XII.H;
- 8 • Providing both the FTC and Defendants with access to the Receivership Entities'
- 9 Documents, PI § XII.Q; and
- 10 • Suspending the Corporate Defendants' business operations if, in the Receiver's
- 11 judgment, they could not continue lawfully and profitably, PI § VI.T.

12 The Defendants' business was terminated as of the entry of the Temporary Restraining  
 13 Order ("TRO") and thereby rendered certain of the Receiver's duties (*e.g.*, determining whether  
 14 or not the Corporate Defendants could continue to operate lawfully and profitably) unnecessary.  
 15 The Receiver's efforts were thus largely limited to protection of consumer interests and asset  
 16 recovery.

17 **B. Receiver's Initial Entry**

18 On Friday, June 19, 2020, in preparation for securing the receivership site located at 101  
 19 Convention Center Drive, Suite 500, Las Vegas, Nevada, the Receiver arranged for the  
 20 building's janitorial staff to conduct a commercial COVID-19 disinfection and cleaning in the  
 21 suite. When the receivership team arrived on Monday, June 22, there was no active business  
 22 onsite.<sup>2</sup> As the Receiver would later confirm by speaking with Defendants' counsel, Defendants  
 23 had previously downsized their payday loan business due to the COVID-19 pandemic and had  
 24 then shuttered the business completely when the TRO (ECF No. 13) was entered on May 19,  
 25 2020.

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26  
 27 <sup>2</sup> Although the premises were expansive (approximately 11,000 square feet, leased at \$17,000  
 28 per month), only 50% or so was in use at the time of entry. Timecard records onsite indicated  
 that approximately 25 employees were active leading up to May 19, 2020.

1 The Receiver proceeded, with the parties' consent, to secure the business records of the  
2 Receivership Entities and vacate the premises. Business records from the site were boxed and  
3 approximately 250 boxes were shipped to the Receiver's secure storage area in San Diego.  
4 Leased equipment was returned to its respective vendors and nearly all of the remaining furniture  
5 and equipment (which had no realizable value) was removed by junk and recycling vendors.<sup>3</sup> On  
6 July 17, 2020, the premises were returned to the property manager.

7 **C. Defendants' Business Operations**

8 While Defendants had ceased operations, the Receiver was still able to conduct a review  
9 of their business practices and confirm that the basic contours of Defendants' business were  
10 consistent with the allegations in the FTC's Complaint. Defendants made generally small (\$200-  
11 \$500), short-term payday loans to individuals, but the real revenue driver appeared to be high  
12 finance charges (interest and fees) that inflated consumer "repayments" to many multiples of the  
13 original loan. Consumers were presented with three different "lenders" (Harvest Moon, Green  
14 Stream, and Gentle Breeze), but each of the purported options they were shown was a dba of the  
15 Tribal Defendant. Defendants' business was run through the Tribal Defendant, but it was the  
16 Receivership Entities which provided sales and support services, provided customer service,  
17 leased the office space, paid the employees, and funded the loans (via a credit line to the Tribal  
18 Defendant). In all respects, Defendants operated their business as a common enterprise.

19 Because Defendants had already terminated their business operations, the Receiver did  
20 not focus on whether or not their business had or could operate lawfully. Nonetheless, and as  
21 noted, materials that the Receiver's team found onsite were consistent with the FTC's allegations  
22 and confirmed that Defendants' misrepresentations about payment terms and procedures were  
23 ingrained in the business. The Receiver's full assessment of Defendants' business operations is  
24 presented in his Preliminary Report (ECF No. 65).

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<sup>3</sup> The Receiver was able to sell two 600-pound Sentry safes found in Naito's office for a total of \$900.

## II. Consumer Protection Efforts

### A. Providing Notice and Updates to Consumers

Upon his appointment, the Receiver immediately suspended all consumer payments to the Receivership Entities. The Receiver later sent the following email notice to clients of Defendants' business with active accounts regarding the imposition of the receivership and the status of the case:

Re: Payday Loan Lawsuit – *FTC v. Lead Express, Inc., et al.*

\*\*\*DO NOT REPLY TO THIS EMAIL. If you have questions, send them to [harvestmoon@regulatoryresolutions.com](mailto:harvestmoon@regulatoryresolutions.com)

You have been identified as a customer of **Harvest Moon Financial, Gentle Breeze Online, or Green Stream Lending**. In May 2020, the Federal Trade Commission ("FTC") sued these companies and others for deceptive practices. Shortly after the Court entered a Temporary Restraining Order ("TRO"), which froze defendants' assets and prohibited certain business activities, defendants ceased business operations.

In June 2020, defendants stipulated to the entry of preliminary injunction, which included the appointment of a Receiver over Lead Express, Inc., Camel Coin, Inc., Sea Mirror, Inc., Naito Corp., Kotobuki Marketing, Inc., Ebisu Marketing, Inc., Hotei Marketing, Inc., and Daikoku Marketing, Inc. The Receiver has established a website and copies of the complaint and Court orders are available here: <https://regulatoryresolutions.com/case/federal-trade-commission-v-lead-express-inc-et-al-harvest-moon-receivership/>. We will post updates on the Receiver's website as the case proceeds.

With the company no longer operating, at this time the Receiver has suspended payments for loans that you received from the company. You should not see any automatic withdrawals taken and please do not send any money to the company.

With regards to refunds, at this very early stage of the case, the Receiver is still conducting his investigation and marshalling the assets of the Receivership Entities. If the FTC prevails in the case, the matter of refunds will be an issue for the FTC and the Court to resolve. This determination is a long way down the road.

Defendants in the FTC's complaint include: Lead Express, Inc., Camel Coin, Inc., Sea Mirror, Inc., Naito Corp., Kotobuki Marketing, Inc., Ebisu Marketing, Inc., Hotei Marketing, Inc., Daikoku Marketing, Inc., La Posta Tribal Lending Enterprise d/b/a Harvest Moon Financial, Gentle Breeze Online, and Green Stream Lending, Takehisa Naito, and Keishi Ikeda.

The Receiver also provided notice to consumers on the websites used by Defendants in connection with their business operations. The Tribal PI directed that the Internet domains for

1 the websites,<sup>4</sup> which were nominally owned by the Tribal Defendant, be transferred to the  
 2 Receiver. Following the transfer, the Receiver modified these websites to provide consumers  
 3 with information about the FTC’s case and the receivership.

4 The Receiver’s team also responded to consumer inquiries by both phone and email  
 5 throughout the pendency of the receivership. The Receiver has also continued to update the  
 6 website as the case has progressed. Most recently, on April 1, 2021, the Receiver updated the  
 7 website to reflect the entry of the permanent injunction and monetary judgment and to explain  
 8 the termination and discharge process.

9 **B. Attempts to Identify Consumer Loans Sent to Collection**

10 In keeping with the directive to protect the consumer victims, the Receiver reviewed the  
 11 Defendants’ delinquent loan collection practices, focusing on whether accounts were sent to  
 12 third-party collectors and whether negative information was reported to credit reporting agencies  
 13 (“CRAs”). The goal was to identify those consumer accounts sent to third-party collectors and  
 14 direct the collectors to cease any collection efforts and remove any negative information reported  
 15 to CRAs. Ultimately, however, a review of the Defendants’ records led the Receiver to conclude  
 16 that reliably identifying third-party collection accounts was not feasible. Defendants’ loan  
 17 management database did not identify the collection agency or agencies to which delinquent  
 18 loans were referred. Because the Receiver’s initial entry took place after the Defendants had  
 19 closed down their business, the Receiver’s team did not have the opportunity to interview  
 20 employees who might have been able to shed light on this issue.

21 **C. Abandonment of Outstanding Consumer Debt**

22 The Stipulated Order for Permanent Injunction and Monetary Judgment entered against  
 23 the Corporate and Individual Defendants (ECF No. 95, “SPI”) converted existing consumer debt  
 24 to “paid in full” status, but only where “such Existing Debt exceed[ed] the amount financed plus  
 25 one finance charge.” *Id.* § V.A. Any debts still remaining – that is, principal and one interest  
 26 payment – were then transferred and assigned to the Receiver pursuant to the SPI. *Id.* § V.C.

27 \_\_\_\_\_  
 28 <sup>4</sup> The relevant websites were gentlebreezeonline.com, mygbo.com, harvestmoonloans.com,  
 hmlogin.com, gslogin.com, and greenstreamlending.com.

1 Prior to the entry of the Stipulated Order, the Receiver's team examined the feasibility of  
2 collecting outstanding principal and one interest payment from consumers. The analysis  
3 revealed relatively large amounts of potential consumer collections, but each of the loans and  
4 associated single interest charge were small in size, roughly \$200. The collection of these  
5 thousands of very small loans was not feasible for the receivership team and would require the  
6 use of a third-party debt collector. Ultimately, the Receiver concluded the best course was to  
7 abandon this collection of outstanding loans, particularly given the allegations at the heart of this  
8 lawsuit. This determination was conveyed to counsel for the FTC and the Receivership Entities  
9 and Individual Defendants several months ago. The FTC indicated it had no objection to this  
10 approach. Counsel for the Receivership Entities and Individual Defendants was contacted twice  
11 and indicated that he did not believe his clients would not have an objection to this approach, but  
12 did not provide a final answer.

### 13 **III. Asset Management and Recovery**

#### 14 **A. Transfer of Assets from Tribal Defendant**

15 The terms of the Tribal PI required the Tribal Defendant to transfer to the Receiver funds  
16 from any accounts held in its name or one of its DBAs (Harvest Moon Financial, Green Stream  
17 Lending, and Gentle Breeze Online) at First National Bank Albany/Breckenridge, PeopleFirst  
18 Bank, First Dakota National Bank, CNB Bank & Trust, N.A., North American Banking  
19 Company, and Chippewa Valley Bank. To the extent that the banks still held funds on behalf of  
20 the Tribal Defendant, the funds were transferred.

#### 21 **B. Repayment of Paycheck Protection Program Loans**

22 Pursuant to Section XIII.A of the PI, the Receiver contacted Open Bank and Wells Fargo  
23 Bank, N.A. to request that funds held by the banks on behalf of the Receivership Entities be  
24 transferred to the Receiver. Both banks complied, but counsel for Open Bank notified us that  
25 three of the Receivership Entities (Ebisu Marketing Corp., Naito Corp., and Kotobuki Marketing,  
26 Inc.) had borrowed funds from the bank under the Small Business Administration's Paycheck  
27 Protection Program ("PPP"), which was implemented under the Section 1102 of the CARES Act.  
28 The aggregate outstanding amount of the loans was \$438,052.13.



<b>Borrower Name</b>	<b>PPP Loan Principal</b>	<b>Accrued Interest</b>	<b>Total Payoff Amount</b>
Ebisu Marketing, Inc.	\$15,300	\$40.66	<b>\$15,340.66</b>
Kotobuki Marketing, Inc.	\$362,400	\$853.88	<b>\$363,253.88</b>
Naito Corp.	\$59,300	\$157.59	<b>\$59,457.59</b>
<b>Total</b>	<b>\$437,000</b>	<b>\$1,352.13</b>	<b>\$438,052.13</b>

The balance of the Open Bank accounts held by Receivership Entities exceeded the amount of the PPP loans. Open Bank therefore requested that these PPP loans be repaid before it would transfer the remaining funds to the Receiver. On July 23, 2020, the parties filed a Joint Motion to Repay Receivership Entities' Paycheck Protection Program Loans and Sell Receivership Entities' Vehicles (ECF No. 67) requesting an Order approving the repayment of the loans along with the liquidation of the three vehicles held in the names of Receivership Entities. On August 7, 2020, the Court entered an Order granting the Joint Motion (ECF No. 69). The Receiver coordinated with the bank's counsel to accomplish the repayment of the PPP loans and the funds remaining in the Open Bank accounts after repayment – an aggregate amount of \$666,312.96 – were transferred to the Receiver.

### **C. Sale of Assets**

Defendants turned over three vehicles to the Receiver: a 2015 GMC Yukon Denali, a 2016 Hyundai Tucson SE, and a 2016 Mercedes-Maybach S600. The Receiver was authorized to sell these vehicles following the Court's grant of the parties' Joint Motion. *See* ECF No. 69.

After researching local consignment options and other sales channel options, the Receiver entered into a consignment arrangement with a local dealer in Las Vegas to store and consign the vehicles. A member of the receivership team inspected each of the three vehicles. The Tucson and Yukon Denali, in particular, were both high-mileage vehicles in need of extensive repair work. In order to minimize repair and storage costs, the Receiver directed that only essential repairs be made. Both vehicles sold within 30 days.

The 2016 Mercedes S600 Maybach had low mileage and was in relatively good condition although multiple service lights were on. No offers were received in the first 60 days. The owner of the company consigning the vehicle then expressed an interest. After some negotiation, the owner of the company offered to purchase the Maybach for \$70,000, waive his commission,



1 and absorb the costs previously incurred to prepare the vehicle for sale. In order to ensure the  
 2 offer was a fair one, the Receiver's office asked RM Sotheby's (a large high-end automobile  
 3 auction house the Receiver has used in the past) to provide an estimate of the Maybach would  
 4 sell for if run through a Sotheby's auction. Sotheby's charges a ten percent commission on  
 5 vehicles sold at auction and estimated that the vehicle would sell for between \$65,000 and  
 6 \$70,000, meaning that the Receivership Estate was only likely to net a maximum \$63,000 at  
 7 auction. Because the consignment company owner's offer allowed the Receiver to avoid paying  
 8 a commission and net the entire sale price of \$70,000 to the Receivership Estate, the Receiver  
 9 concluded that the consignment company owner's offer represented a good price for the vehicle  
 10 and accepted it.

11 The sale of the vehicles netted the Receivership Estate \$93,680 (\$16,515 for the 2015  
 12 GMC Yukon Denali, \$7,165 for the 2016 Hyundai Tucson SE, and \$70,000 for the 2016  
 13 Mercedes-Maybach S600). In addition to the three vehicles, the Receiver was able to sell two  
 14 safes found onsite for \$900. In total, the Receiver's asset sales efforts netted the Receivership  
 15 Estate \$94,580.

#### 16 **IV. Receivership Accounting**

17 Attached as Exhibit A is a Receipts and Disbursements Summary for the receivership  
 18 period through April 30, 2021. It shows aggregate receipts of \$1,282,812.31, less disbursements  
 19 of \$177,111.63, for net cash as of this Final Report of \$1,105,700.68.

#### 20 **APPLICATION FOR DISCHARGE AND**

#### 21 **APPROVAL OF FINAL FEE APPLICATION**

22 On April 1, 2021, the Court entered the Stipulated Order for Permanent Injunction and  
 23 Monetary Judgment as to Defendants Lead Express, Inc.; Camel Coins, Inc.; Sea Mirror, Inc.;  
 24 Naito Corp.; Kotobuki Marketing, Inc.; Ebisu Marketing, Inc.; Hotei Marketing, Inc.; Daikoku  
 25 Marketing, Inc.; Takehisa Naito; and Keishi Ikeda (ECF No. 95), resolving the underlying case  
 26 against the Receivership Entities.<sup>5</sup>

27  
 28 <sup>5</sup> On November 20, 2020, the FTC filed its Motion for Entry of Default Judgment Against Tribal Defendant La Posta Tribal Lending Enterprise (ECF No. 91). This motion has been fully briefed and the entry of default is pending before the Court. Because the Tribal Defendant was never

1 With the case now resolved as to the Receivership Entities, Mr. McNamara files this  
2 Application for Discharge on the grounds that he has completed his duties as defined in the PI.

3 The Final Fee Application seeks approval to pay fees and expenses for services during  
4 the nine-month period August 1, 2020 through April 30, 2021 as follows: \$18,662.50 fees and  
5 \$256.06 expenses to the Receiver and his staff payable to TWM Receiverships Inc., dba  
6 Regulatory Resolutions; \$11,239.50 fees and \$13.90 expenses to Receiver's counsel McNamara  
7 Smith LLP; and \$1,995.80 fees to Receiver's local counsel Ballard Spahr LLP.<sup>6</sup>

8 The Final Fee Application also seeks authorization to hold back \$7,500 as a reserve for  
9 final administrative costs, *e.g.*, document and electronics storage costs, removal and destruction  
10 of computer hard drives, and document destruction costs, which may be expended without  
11 further order of the Court, and after 120 days any unexpended funds from that reserve shall be  
12 disbursed to Plaintiff Federal Trade Commission. If the invoices in this Final Fee Application  
13 are approved for payment in full, and the requested reserve of \$7,500 is approved, net cash for  
14 immediate transfer to the FTC will be \$1,066,032.92.

15 The Final Fee Application is made pursuant to Section XVIII of the PI, which provides  
16 that the Receiver "and all personnel hired by the Receiver as herein authorized, including  
17 counsel to the Receiver and accountants, are entitled to reasonable compensation for the  
18 performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses  
19 incurred by them, from the Assets now held by, in the possession or control of, or which may be  
20 received by, the Receivership Entities."

21 The Application is based upon the Final Report, the Declaration of Thomas W.  
22 McNamara, and the proposed Order filed concurrently with this Application, the pleadings in  
23 this matter, and such other oral and documentary evidence that may be presented at or before the  
24 time of the hearing on the Application.

25 \_\_\_\_\_  
26 subject to the receivership, however, its pending status should not affect the instant application  
for discharge.

27 <sup>6</sup> The Receiver's forensic accountant's time for June 22-26, 2020 (fees of \$6,278.00) was not  
28 previously included on the Receiver's First Interim Fee Application (ECF No. 73). The Receiver  
respectfully requests the Court's approval to pay these fees.

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Dated: May 7, 2021

BALLARD SPAHR LLP

By: /s/ Abran E. Vigil  
Abran E. Vigil (NV 7548)  
BALLARD SPAHR LLP  
1980 Festival Plaza Drive, Suite 900  
Las Vegas, NV 89135-2958  
Tel.: 702-471-7000  
Fax: 702-471-7070

*Attorneys for Court-Appointed Receiver,  
Thomas W. McNamara*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7<sup>TH</sup> day of May, 2021, pursuant to Fed. R. Civ. P. 5(b), I served via CM/ECF or delivered by email and mailing in the U.S. Mail, a true and correct copy of the foregoing **NOTICE OF RECEIVER'S FINAL REPORT AND APPLICATION FOR: (1) DISCHARGE OF RECEIVER, AND (2) APPROVAL OF FINAL FEE APPLICATION**, postage prepaid and addressed to the following:

**VIA CM/ECF**

Gregory A. Ashe / Helen Clark  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington, DC 20580  
Tel.: 202-326-3719 (Ashe)  
Tel.: 202-326-2273 (Clark)  
Fax: 202-326-3768  
gashe@ftc.gov; hclark@ftc.gov  
*Attorneys for the Federal Trade Commission*

**VIA CM/ECF**

M. Migali Mercera  
Pisanelli Bice PLLC  
400 South 7th Street, Suite 300  
Las Vegas, NV 89101  
Tel.: 702-214-2100 / Fax: 702-214-2101  
mmm@pisanellibice.com  
*Attorneys for Defendants Lead Express, Inc.;  
Camel Coins, Inc.; Sea Mirror, Inc.; Naito  
Corp.; Kotobuki Marketing, Inc.; Ebisu  
Marketing, Inc.; Hotei Marketing, Inc.;  
Daikoku Marketing, Inc.; Takehisa Naito; and  
Keishi Ikeda*

**VIA CM/ECF**

Justin Gray (*Pro Hac Vice*)  
Rosette, LLP  
44 Grandville Avenue SW, Suite 300  
Grand Rapids, MI 49503  
Tel.: 616-655-1601 / Fax: 517-913-6443  
jgray@rosettela.com  
*Attorney for Defendant La Posta Tribal  
Lending Enterprise dba Harvest Moon  
Financial, dba Gentle Breeze Online, dba  
Green Stream Lending*

**VIA CM/ECF**

Lindsay Ager, Assistant U.S. Attorney  
501 Las Vegas Boulevard South, Suite 1100  
Las Vegas, NV 89101  
Tel.: 702-388-6336  
Fax: 702-388-6787  
lindsay.ager@usdoj.gov  
*Attorneys for the Federal Trade Commission*

**VIA CM/ECF**

David N. Anthony (*Pro Hac Vice*)  
Michael E. Lacy (*Pro Hac Vice*)  
Timothy A. Butler (*Pro Hac Vice*)  
Ryan J. Strasser (*Pro Hac Vice*)  
Troutman Sanders  
600 Peachtree Street, NE, Suite 3000  
Atlanta, GA 30308  
Tel.: 404-885-3000  
david.anthony@troutman.com;  
michael.lacy@troutman.com;  
timothy.butler@troutman.com;  
ryan.strasser@troutman.com  
*Attorneys for Defendants Lead Express, Inc.;  
Camel Coins, Inc.; Sea Mirror, Inc.; Naito  
Corp.; Kotobuki Marketing, Inc.; Ebisu  
Marketing, Inc.; Hotei Marketing, Inc.;  
Daikoku Marketing, Inc.; Takehisa Naito; and  
Keishi Ikeda*

**VIA CM/ECF**

Kenneth E. Hogan  
Hogan Hulet PLLC  
1140 N. Town Center Dr., Suite 300  
Las Vegas, NV 89144-0596  
Tel.: 702-800-5482 / Fax: 702-800-5482  
ken@h2legal.com  
*Attorney for Defendant La Posta Tribal  
Lending Enterprise dba Harvest Moon  
Financial, dba Gentle Breeze Online, dba  
Green Stream Lending*

/s/ Abran Vigil

Abran Vigil

*Attorneys for the Court-Appointed Receiver, Thomas W. McNamara*